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Serial No. 09/982,503

HRT 281

Renewed Petition to Accept an Unintentionally Delayed Claim of Priority (1 page)
Amendment (8 pages)

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DOCKET NO. HRT-281

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

Applicants: S. Boyd et al.

Serial No.: 09/982,503

Art Unit: 3738

Filed : October 18, 2001

Examiner: D. Isabella

For : DEVICES AND METHODS FOR PORT-ACCESS MULTIVESSEL
CORONARY ARTERY BYPASS SURGERYCERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence is being faxed to the
United States Patent & Trademark Office at (703) 872-9306 on July 15, 2004

Brian S. Tomko

(Name of applicant, assignee, or Registered Representative)

Honorable Commissioner of Patents
Mail Stop Petition
Alexandria, VA 22313

RENEWED PETITION TO ACCEPT
AN UNINTENTIONALLY DELAYED CLAIM OF PRIORITY

Dear Sir:

This Renewed Petition is made in response to the Office Action dated Decision on Petition dated July 1, 2004, wherein Commissioner denied the Petition filed on January 15, 2004, for improperly incorporating by reference prior-filed applications in the amendment appended to the original Petition. Applicants have deleted the incorporation by reference sentence in the appended Amendment and request that the Commissioner grant the Petition.

Please charge any additional surcharge or fee that is required in connection with this petition to Account 10-0750/HRT-281/BST.

Please feel free to contact me, if anything further is required at (732)524-1239.

Respectfully submitted,

Dated: July 15, 2004

By: BS Tomko

Brian S. Tomko
Reg. No. 41,349

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DOCKET NO. HRT 281

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CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. 81.6I hereby certify that this correspondence is being faxed to the
United States Patent & Trademark Office at (703) 872-9306 on July 15, 2004

JUL 19 2004


Brian S. Tomko

OFFICE OF PETITIONS

(Name of applicant, assignee, or Registered Representative)

Honorable Commissioner of Patents
Alexandria, VA 22313AMENDMENT

Dear Sir:

In connection with the Renewed Petition to Accept an Unintentionally Delayed Claim of
Priority filed on this date, please consider the following:

An amendment to the specification begins on page 2 of this document.

A list of the claims begins on page 3 of this document.

Remarks begin on page 6 of this document.

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Please replace the first paragraph of page 1 of the specification with the following:

This application is a divisional of U.S. Patent Application Serial No. 09/487,024, filed January 19, 2000, now issued as U.S. Patent No. 6,494,211, which is a continuation of U.S. Patent Application Serial No. 09/019,014, filed February 5, 1998 now abandoned, which is a division of U.S. Patent Application Serial No. 08/486,941, filed June 7, 1995, now U.S. Patent No. 5,799,661, which is a continuation-in-part of copending U.S. Patent Application Serial No. 08/281,891, filed July 28, 1994, now U.S. Patent No. 5,735,290, which itself is a continuation-in-part of copending U.S. Patent Application Serial No. 08/023,778, filed February 22, 1993, now U.S. Patent No. 5,452,733. The complete disclosures of these related U.S. patent applications are hereby incorporated herein by reference for all purposes.

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1-105 (Cancelled)

106. (Currently Amended) A surgical retraction device comprising:

- a shaft having a proximal end and a distal end;
- a contact surface adjacent said distal end for ~~atraumatically contacting~~ manipulating or retracting living tissue within a body cavity; and
- a means for applying a vacuum at said contact surface.

107. (Original) The surgical retraction device of claim 106 wherein said means for applying a vacuum at said contact surface comprises a passage from said proximal end to said distal end of said shaft, said passage being in fluid communication with said contact surface.

108. (Original) The surgical retraction device of claim 106 wherein said contact surface further comprises a friction-increasing surface.

109-120 (Cancelled)

121. (Currently Amended) A surgical retraction device for retracting a body structure within a body cavity, the body structure having a curved external surface, the surgical retraction device comprising:

- a rigid shaft having a distal end and a proximal end, the shaft having a contact surface near the distal end with a curvature selected to conform to the external surface of the body structure; and

- a textured, porous material attached to the contact surface for frictionally engaging the body structure;

wherein a distal portion of the shaft including the contact surface and porous material may be introduced into the body cavity through an opening ~~access port~~ with a diameter of at most about 12 mm.

122. (Original) The surgical retraction device of claim 121 wherein the porous material comprises a fabric pad.

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123. (Original) The surgical retraction device of claim 121 wherein the porous material comprises surgical gauze.

124. (Original) The surgical retraction device of claim 121 wherein the porous material comprises a foam pad.

125. (Original) The surgical retraction device of claim 121 wherein the porous material is wrapped around a distal portion of the shaft.

126. (Original) The surgical retraction device of claim 121 wherein the contact surface comprises a lateral surface of a distal portion of the shaft, the distal portion of the shaft having a diameter of less than about 10 mm.

127. (Original) The surgical retraction device of claim 121 wherein the porous material covers the distal end of the shaft.

128. (Original) The surgical retraction device of claim 121 further comprising an aspiration lumen within the shaft extending from the proximal end to at least the contact surface, and a plurality of holes in the contact surface in communication with the lumen, whereby a vacuum may be applied through the aspiration lumen and the holes to withdraw fluids from the porous material.

129. (Original) The surgical retraction device of claim 121 wherein at least a portion of the shaft is malleable such that the contact surface may be shaped into various curvatures.

130-149 (Cancelled).

150. (New) The surgical retraction device of claim 106 wherein the means for applying a vacuum includes a plurality of suction holes spaced along the contact surface.

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151. (New) The surgical retraction device of claim 150 wherein the means for applying a vacuum includes a passage that communicates with the series of suction holes spaced along the contact surface.

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REMARKS

Claims 106-108, 121-129, and 150-151 are pending in this application. Claims 1-105, 109-120 and 130-149 are canceled. Claims 150 and 151 are new. No new matter has been added. Claims 106 and 121 are amended.

The Examiner rejected claims 106-108, 121 and 126-129 under 35 U.S.C. § 102(b) as being anticipated by Laghi (U.S. Patent No. 5,117,822), Benetti (U.S. Patent No. 5,894,843) or Borst (U.S. Patent No. 5,836,121).

The Examiner further rejected claims 106-108 and 121-129 under 35 U.S.C. § 102(e) as being anticipated by Boyd (U.S. Patent No. 5,779,661).

Applicants have filed a Renewed Petition to Accept an Unintentionally Delayed Claim of Priority on this date, a copy of which is attached. The correct priority claim is listed above as an amendment to the specification. Once the Petition Branch acts on the attached Petition, neither Benetti nor Borst will be citable as prior art, as the filings dates of Benetti (February 20, 1996) and Borst (September 20, 1995) are after the filing date of the earliest filed related priority application that discloses the claimed subject matter: U.S. Patent Application Serial No. 08/486,941, filed June 7, 1995 (now U.S. Patent No. 5,799,661). Boyd will also be removed as prior art because it is the basis for the priority claim. At that point, Applicants request that the Examiner withdraw the rejections that use Benetti, Borst or Boyd as their basis.

Upon correction of the priority claim, only one cited reference—Laghi—will continue to apply as prior art. Applicants submit that the independent claims 106 and 121, as amended, define novel subject matter. Applicants have amended claim 106 to claim a surgical retraction device that includes a shaft having a proximal end and a distal end, a contact surface adjacent the distal end for manipulating or retracting living tissue within a body cavity, and a means for applying a vacuum at the contact surface.

Laghi does not teach or disclose such a device that includes a contact surface for manipulating or retracting living tissue within a body cavity that has a means for applying a vacuum at the contact surface. Instead, Laghi discloses a heart spoon for slipping under the heart to isolate the heart from the thoracic cavity and for supplying a cooling fluid to the heart and thoracic cavity. See Laghi, col 1:48-50; col 4:7-17.

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Referring generally to Figure 3 of Laghi, spoon 10 is used to space the heart from the thoracic cavity by slipping it under the heart. Cradling part 14 of spoon 10 is shaped to cradle the heart. Col 3:43-47. Thus, the upper surface of the cradling part 14 contacts the heart. Coolant is fed through passageway 24 to perforations 30 within cradling part 14, where it flows up to the rim of cradling part 14 and down around its external walls 32. Col 3:56-62. The coolant collects or puddles below the spoon within the thoracic cavity. Col 4:7-14. The puddle is drained via apertures located on the *underside* of spoon 10: "A manifold member 36 of linear configuration is formed integrally with the *bottom wall* 38 of part 14" Col 4:16-20 (emphasis added). As is shown in Figure 3, arrows 41 depict the coolant being aspirated via apertures 40 through passageway 42. As a result the means supplied in Laghi for applying a vacuum are not located at the contact surface. Instead, the means is located below the contact surface, where the coolant puddles. Thus, Laghi does not teach or disclose the elements of claim 106, and Applicants request the Examiner to withdraw the rejection as to claim 106 and the claims that depend from claim 106, claims 107, 108, 150 and 151.

As to claim 121 and those claims that depend from claim 121, Applicants submit that Laghi does not disclose or teach the claims invention. Claim 121 claims a surgical retraction device for retracting a body structure within a body cavity that includes a rigid shaft having a distal end and a proximal end, the shaft having a contact surface near the distal end with a curvature selected to conform to the external surface of the body structure, and a textured, porous material attached to the contact surface for frictionally engaging the body structure, wherein a distal portion of the shaft including the contact surface and porous material may be introduced into the body cavity through an opening with a diameter of at most about 12 mm.

The device disclosed in Laghi is described above. Applicants have reviewed the Laghi disclosure and do not find any teaching of a contact surface having a textured material attached thereto for frictionally engaging the body structure. Nor is there any teaching to size the shaft, contact surface and porous material such that it may be introduced through a small opening. As such, Applicants submit that claims 121-129 are allowable over Laghi, and request the Examiner to withdraw the rejection.

In the event that it becomes necessary to charge additional extension fees or any additional charge, Applicants hereby grant the Commissioner permission to charge the Deposit Account No. 10-0750/HRT281/BST.

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If the Examiner believes that a discussion of the pending claims would expedite the prosecution of this application, he is invited to contact the undersigned.

Respectfully submitted,

By: 

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Dated: July 15, 2004